

BRIEF DESCRIPTION OF DISPUTE AND REQUESTED RELIEF

Fork & Dagger, LLC (“Manager”) asserts as follows:

1. Manager is a Member and Manager of Whiskey Rocks Tempe, LLC, (“Gringo”), a limited liability company organized for the operation of a restaurant bar in Tempe, Arizona, which was ultimately called Gringo Star Street Bar.
2. Respondent True Gentlemen, LLC (“TL”) is a Member of Gringo.
3. Throughout the past year, TL has alleged and asserted to other Gringo Members that Manager had engaged in fraud and other improprieties, and had overcharged for corporate overhead and other expenses. Most recently, in the course of soliciting other Members to contribute to an alleged litigation fund being amassed by TL. It stated it would be filing a “public complaint” against Manager for its alleged wrongdoing.
4. Actual and judiciable disputes exist between Manager and TL as to whether Manager engaged in any overcharge or other financial impropriety relating to Gringo (and, to the extent Manager permitted any overcharge, determining what that amount is so it can be reimbursed to Gringo by Manager) and as to how such dispute should be resolved under the Gringo Operating Agreement.

Relevant Provisions of the Gringo Operating Agreement

5. Pursuant to Gringo’s Operating Agreement and Private Placement Memorandum, its Operating Agreement controls the relationship between its Members.
6. Pursuant to ¶ 4.01(a)(1) of the Operating Agreement, all legitimate expenses of Gringo are to be paid by Gringo before any distributions to Members

7. Pursuant to ¶ 6.02 of the Operating Agreement, Manager is empowered to incur all reasonable expenditures and pay all obligations of Gringo and employ any persons the Manage may deem necessary for Gringo's operations.

8. Pursuant to ¶ 6.09 of the Operating Agreement, Manager may delegate any of its duties as Manager might determine.

9. Pursuant to ¶8.01 of the Operating Agreement, should the Manager be "threatened to be made a party to or is involved in any threatened, pending or completed action, suit or proceeding," Manager shall be indemnified "[by Gringo] and the Members against judgments, penalties ... settlements and reasonable costs and expenses (including, without limitation, attorneys' fees) actually incurred by [Manager] in connection with such Proceeding [if Manager] acted in good faith and in a manner he or she reasonably believed to be in, or not opposed to, the best interest of [Gringo]

10. Paragraph 12.16 of the Operating Agreement provides in pertinent part as follows:

If any dispute will arise between the Members, any Member may serve upon one or more other Members a written notice demanding that such dispute be resolved by confidential arbitration ... Unless the parties elect otherwise, any such arbitration will be conducted under the Commercial Arbitration Rules of the American Arbitration Association. Any arbitration proceeding will take place in Phoenix, Arizona. The award of the arbitrators will be final, binding and enforceable in any court of competent jurisdiction.

11. Pursuant to ¶ 12.16(b) of the Operating Agreement, the prevailing party shall be entitled to an award of the expenses of the proceeding in the discretion of the arbitrator.

Conduct of Gringo's Business

12. Pursuant to the agreement of the parties, Manager permitted two of TL's Members, Hartley Rodie and Stephen Sperry, to conduct and oversee Gringo's day-to-day business.

13. While Sperry and Rodie operated Gringo's business successfully and profitably between 2013 and 2016, Gringo's net income declined significantly after 2016.

14. Upon information and belief, Sperry and Rodie neglected their duties to Gringo upon their potential involvement in other restaurant ventures.

15. Sperry and Rodie also engaged in excessive participation or giveaways of Gringo's property, giving away food, drinks and other property of Gringo in "comps" totaling \$1,027,902.00 out of total gross income (including comps) of \$10,548,451.00.

16. Although Sperry and Rodie controlled the day-to-day operations of Gringo, Manager provided oversight, corporate-type and administrative services and caused an outside bookkeeper and CPA to pay bills and handle other accounting matters for Gringo.

Proforma to Actual Results

17. As part of its Private Placement Memorandum, Gringo distributed a one-year proforma "Opening Budget" setting forth anticipated revenue and detailed expenses.

18. The proforma "Opening Budget" specifically alerted and advised TL, Rodie, Sperry and other potential investors that "corporate overhead" would constitute an expense of Gringo and that it would approximate 3% of its gross revenues.

19. While early gross revenues of Gringo were similar to that projected in the proforma “Operating Budget”, revenues declined significantly over Gringo’s years of operation.

20. However, and as relevant to the underlying dispute, the ratios of Gringo’s operating expenses and corporate overhead to its adjusted gross income were remarkably identical to that which it projected and represented to potential investors.

21. Specifically, for example, Gringo projected that its operating expenses would approximate 18.27% of its gross sales. In fact, Gringo’s actual operating expenses from 2013 through 2017 equaled 18.13% of its adjusted gross sales.

22. Similarly, Gringo projected that “corporate overhead” would approximate 3.01% of its gross sales. Gringo’s actual corporate overhead for 2013 through 2017 actually totaled 3.03% of its adjusted gross sales.

23. The ratios of Gringo’s operating expenses and corporate overhead would have been significantly lower if comparing those numbers to actual gross sales, as opposed to adjusted gross sales which deducted the over \$1M in Sperry and Rodie’s giveaways.

The Disputes

24. For many months TL, through Sperry and Rodie, have alleged and asserted that Manager overcharged operating expenses and corporate overhead and have requested and have been provided with exhaustive accounting records and invoices by Manager in an attempt to demonstrate there was and is no impropriety.

25. In September 2018, after having been provided with extensive records, TL, Sperry and Rodie again demanded production of many of the records which they had already been provided and additionally demanded complete access to financial records of Manager's other businesses and Gringo's bookkeeper's personal credit card records on which some of Gringo's purchases had been made.

26. Manager responded that all Gringo records would be produced again for inspection and copying, but that records pertaining to its other businesses (and personal credit card records of Manager's bookkeeper) would only be provided on a confidential basis.

27. Manager also communicated that if any accounting indicated any improper charges against Gringo, that such amounts would be promptly reimbursed.

28. On October 4, 2018, after reviewing a totally improper confidentiality agreement provided by TL's attorneys, Manager redrafted and provided TL an appropriate confidentiality agreement and indicated that after its execution, all requested records both of Gringo and Manager's other businesses would be provided. Manager emailed extensive Gringo records to TL's attorney at the same time.

29. Despite the extensive time and expense incurred by Manager in collecting records for production and in redrafting the confidentiality agreement, to date, none of TL, Rodie or Sperry ever responded to Manager's invitation to review additional records.

30. Rather, on October 29, 2018, TL, Sperry and/or Rodie text messaged other Gringo Members alleging that Manager had improperly collected over \$800,000 in

expenses and solicited contributions from other Members to sue Manager which they indicated would be made by way of a “public complaint.”

31. Manager is currently holding approximately \$127,138 of Gringo funds for distributions to Members other than TL, which had already demanded and received its portion of funds remaining for distribution to other Members.

**FIRST CLAIM FOR RELIEF
(Declaratory Judgment)**

32. Insofar as Manager is aware, his bookkeeper and CPA have properly accounted for all finances of Gringo.

33. Manager had advised TL that it stands ready to again produce all Gringo records for inspection and copying, as well as requested records of Gringo’s bookkeeper and its other businesses so long as such are received and treated on a confidential basis.

34. Manager has also advised TL that if an accounting indicated any discrepancies or overcharges of Gringo, that Manager would promptly reimburse Gringo for any such amounts.

35. TL, Sperry and Rodie have rejected Manager’s invitations to provide additional records both of Gringo, Manager’s other businesses and Manager’s bookkeeper and have instead accused Manager of wrongdoing to other Members and threatened Manager with a “public complaint.”

36. Actual and justiciable disputes exist between Manager and TL as to whether (a) Manager engaged in any overcharges of Gringo and, if so, in what amount, and (b)

whether such disputes should be resolved by a “public complaint” as threatened by TL or by “confidential arbitration” as TL agreed in the Operating Agreement.

37. Manager requests a declaratory judgment holding that all accountings between it and Gringo have been proper and that if there have been any overcharges whatsoever, to determine the amount, so that Manager may reimburse Gringo as appropriate.

**SECOND CLAIM FOR RELIEF
(Instructions as to the Remaining Gringo Funds)**

38. Manager is currently holding \$127,138 in funds for distribution to Members other than TL.

39. Pursuant to Gringo’s Operating Agreement, Manager is entitled to indemnification and reimbursement for any attorneys’ fees expended with respect to the instant dispute and instant arbitration.

40. Manager requests appropriate direction from the Arbitrator as to disposition of any remaining funds in its custody.

WHEREFORE Manager Demands:

1. A declaratory judgment finding that its accountings to Gringo were proper and that it has engaged in no overcharges;

2. In the event evidence shows that Manager owes Gringo any funds, a determination of that amount, so that Manager may reimburse such to Gringo;

3. Direction of the Arbitrator as to how remaining Gringo funds in its control should be reimbursed;

4. An award of attorneys' fees against TL; and
5. For whatever further relief the Arbitrator may deem proper.

Dated this 1st day of November, 2018

RUSSELL PICCOLI PLC

s/Russell Piccoli
Russell Piccoli